

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

United States of America :
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 vs : 4:17-CR-00139
 :
 :
 Henry Lambert Baird :

BEFORE: HONORABLE MATTHEW W. BRANN
PLACE: Williamsport, Pennsylvania
PROCEEDINGS: Sentencing
DATE: Wednesday, June 10, 2020

APPEARANCES:

For the United States: George J. Rocktashel, Esquire
U.S. ATTORNEY'S OFFICE
240 West Third Street
Suite 316
Williamsport, PA 17701

For the Defendant: Edward J. Rymsza, Esquire
MIELE & RYMSZA, P.C.
125 East Third Street
Williamsport, PA 17701

1 (1:40 p.m., convene.)

2 THE COURT: Our next matter today is that of the
3 United States of America against Henry Lambert Baird, docketed
4 before this Court at criminal number 4:17-CR-00139. The Court
5 notes the presence of Assistant United States Attorney George
6 J. Rocktashel, counsel for Defense, Edward J. Rymsza, Esquire
7 and the defendant, Mr. Baird.

8 Mr. Baird, good afternoon to you.

9 THE DEFENDANT: Good afternoon, Your Honor.

10 THE COURT: Is this matter before the Court today for
11 sentencing, Mr. Rocktashel?

12 MR. ROCKTASHEL: Yes, it is, Your Honor.

13 THE COURT: Mr. Rymsza, do you agree?

14 MR. RYMSZA: Yes, Judge.

15 THE COURT: Thank you. Mr. Baird, I have the
16 unfortunate task of passing sentence on you in this matter
17 today. I note for the record, sir, that I previously accepted
18 your guilty plea to count seven of the indictment, which is
19 conspiracy to distribute 500 grams or more of methamphetamine,
20 in violation of Title 21 of the United States Code at Section
21 846, conducted May 9, 2018.

22 With that said, by way of introduction,
23 Mr. Rocktashel, have you had an opportunity to review the
24 presentence report generated by the probation office here?

1 MR. ROCKTASHEL: Yes, Your Honor.

2 THE COURT: Thank you. And are there any unresolved
3 objections from the Government's perspective?

4 MR. ROCKTASHEL: No, Your Honor.

5 THE COURT: Mr. Rymsza, likewise, have you had an
6 opportunity to review the presentence report?

7 MR. RYMSZA: Yes, with my client.

8 THE COURT: And are there any unresolved objections
9 from the Defense perspective?

10 MR. RYMSZA: Yes.

11 THE COURT: We'll address those momentarily.

12 Mr. Baird, with Mr. Rymsza's assistance, have you had
13 an opportunity to review the presentence report?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And do you agree there are certain
16 unresolved objections that the Court must attend to before
17 passing sentence on you this afternoon?

18 THE DEFENDANT: Yes, I do, Your Honor.

19 THE COURT: Thank you. Before I proceed to address
20 those objections, let me take a moment to explain to you,
21 Mr. Baird, what is going to happen in my courtroom today.

22 In accordance with two cases, the first entitled Gall
23 against the United States, the second entitled Nelson against
24 the United States, I'm required to engage in a three-step

1 process at this sentencing hearing.

2 First, I will calculate the advisory guideline range
3 based on the sentencing guidelines promulgated by the United
4 States Sentencing Commission.

5 Second, I will formally rule on any motions for
6 departure, if there are any, and state the impact, if any, of
7 any such ruling on the guideline calculation.

8 Third, I'm required to exercise discretion and
9 consider the factors set forth at Title 18 of the United States
10 Code at Section 3553(a) in setting a sentence, which may vary
11 from the advisory guideline range.

12 Following a decision of the United States Supreme
13 Court in the matter of United States against Booker, the
14 sentencing guidelines are to be treated as advisory rather than
15 as mandatory. Therefore, although I'm required to start with
16 the guidelines as an initial benchmark, I will not presume that
17 the guideline range is reasonable.

18 Rather, I will make an individualized assessment based
19 upon the facts presented to the Court.

20 So there are some objections that have been made by
21 Mr. Rymsza on behalf of his client. Let's commence with the
22 first, which is a two-level enhancement for discharge of a
23 weapon, looking at United States Sentencing Guideline 2D1.1.

24 Mr. Rymsza, do you care to speak to that first

1 objection?

2 MR. RYMSZA: Certainly, Judge. The objection is based
3 on paragraph 35. The two-level enhancement came from a
4 purported incident where Mr. Baird shot a firearm at a person,
5 some unidentified person, in his apartment or in his residence;
6 that apparently the gun discharged and went through the
7 basement floor and cracked a water pipe, according to the story
8 that Mr. Baird relayed to undercover agents.

9 Obviously it's the Government's burden at this point
10 to prove the enhancement is applicable. The only evidence that
11 has been presented or that we're going to see is from, I guess,
12 the words of Mr. Baird himself during an undercover operation.
13 And I would submit that there's -- that is painfully inadequate
14 to substantiate the two levels.

15 As I cite in my sentencing memorandum, it's our
16 position that this was hyperbole, it was puffery. There is
17 really -- at no point in time was this individual ever
18 identified. There is -- other than Steever -- other than Baird
19 apparently telling Steever this and then Steever relaying it to
20 undercover agents, there is no other evidence to corroborate
21 this event ever even happening. Moreover, there is no evidence
22 that this had anything to do with anything involving this
23 conspiracy.

24 If it was an event that happened because of, you know,

1 his favorite football team losing the game and him being angry,
2 it would clearly have nothing to do with this. The parties
3 aren't identified. The context isn't identified. And again,
4 there is no independent corroboration of any kind. And I don't
5 believe -- I believe the evidence is insufficient and my
6 objection should be sustained.

7 THE COURT: Thank you, sir.

8 Mr. Rocktashel, would you care to speak to this first
9 objection?

10 MR. ROCKTASHEL: Certainly, Your Honor. I would be
11 happy to.

12 First of all, Counsel is correct. The information
13 concerning the discharge from the gun does come directly from
14 the defendant. But we have provided the Court with some
15 exhibits which tend to corroborate what the defendant initially
16 said. And I think the context is relevant for you in assessing
17 its reliability.

18 First of all, the Government exhibit list for the
19 sentencing, Exhibit Number 1, is the Henry Baird F.B.I.
20 interview, which I think is also a Defense exhibit, as well.
21 It accompanies the Defense sentencing memo. But most notable
22 for purposes of this discussion is paragraph two on page one,
23 which talks about the recovery of the .357 magnum, a handgun at
24 Defendant Baird's residence on the date he was arrested in this

1 case.

2 And that's relevant because we -- it shows the fact
3 that he does actually have access to a firearm at the time of
4 the incident discussed in paragraph 35 of the report. The
5 incident where the defendant reported that he had used this gun
6 occurred during the controlled delivery on April 7, 2017. And
7 just -- I won't go through the detail, except for Exhibit 3.
8 But Exhibit 2 is the undercover's report of that controlled
9 delivery, a summary report of what happened. And it includes
10 references to this discussion by not only this defendant but
11 his co-defendant, Joshua Steever, about the use of a firearm.

12 Really, the primary evidence of this incident is
13 Government Exhibit 3, which is the actual transcript. I don't
14 plan to go through the entire transcript. But the most
15 relevant portions -- the specific portions, that is, that deal
16 with this conversation appear to begin at page three toward the
17 bottom of the page where Joshua Steever is telling the
18 undercover while they are in the process of driving -- and this
19 is the third to the last line -- "Henry almost fucking put a
20 bullet in someone last night, too." The undercover says
21 "What?" Steever says, "Fucking kid. Fucking kid was hanging
22 out with us. He said we're a bunch of punks. And Henry was
23 like oh, we're a bunch of punks? And he was like -- Henry put
24 him down and he was like -- and put his .357 to his head. He

1 was like we're punks? And Henry clicked back and was like you
2 ready to die? And the kid was like, I'm not afraid to die.
3 Henry pulled the trigger and the kid fucking hit his arm and he
4 put a fucking round through his fucking floor."

5 As the undercover report indicates, at some point the
6 undercover elected to switch vehicles. Baird was traveling in
7 a different vehicle than Steever in order, understandably, to
8 find out a little bit more about this incident involving the
9 use of violence.

10 That picks up at page four where Henry Baird and the
11 undercover discuss this, and Henry Baird is reported to have
12 said, "Then I had fucking somebody at my house the other night.
13 He disrespected our club."

14 We think you can infer fairly and reasonably that
15 that's a reference to the ACF (sic) cell or chapter that Baird
16 and Steever were members of. It says, "Fucking dork put it
17 right on his forehead and said I'll blow your fucking head off.
18 Before I pulled the trigger, I cocked it and he fucking blocked
19 it, through the floor and hit the goddamn motherfucking water
20 pipe."

21 It's true, I don't have any forensic analysis to show
22 the Court photographs of the bullet, et cetera. But this is
23 kind of a real-time conversation concerning this.

24 Now, Counsel has suggested in briefing that this is

1 mere puffery. It's really not puffery in our position since it
2 first originates with Steever, and then the undercover goes to
3 the lengths of finding out from Baird whether if that's exactly
4 what they are reporting as true. And it's confirmed that it
5 is.

6 What's notable is the altercation described by Steever
7 leading up to this recounting of the use of the firearm
8 regarding an incident, which starts at page three -- I'm
9 sorry -- page two of Government Exhibit 3 where there was an
10 issue involving some black individuals who had an altercation
11 with Baird and Steever.

12 And apparently, in the words of Josh Steever and
13 Henry, referring to Baird, "Henry's fucking jaw is fucked up
14 right now." And Steever goes on to report that Baird was able
15 to use knuckles, which we believe -- the investigators believe
16 refer to brass knuckles against the black individuals. That
17 continues at page three.

18 And then the undercover continues to pursue this with
19 Baird and says understand you guys had had a little dust-up
20 last night, referring to this altercation with the black
21 individuals. And Henry Baird himself goes on to describe that
22 this black individual had asked about the patch, the ASF
23 patch -- and the Court is familiar with that from hearings in
24 this case -- on Baird's jacket, and there was some exchange

1 that resulted in the physical altercation. Baird reports that,
2 "I blasted him with a brass knuckle. Hit him like six to seven
3 times in the face."

4 Is this more puffery or does that confirm the fact
5 that the gun is recovered at Baird's residence and is used in
6 this manner? We submit that it's reasonable to infer that the
7 gun was actually employed -- and when you look at it in the
8 context of the defendant's criminal history, particularly his
9 most recent serious assault involving the use of a baseball bat
10 on a woman that's recounted in the presentence report, we think
11 that this enhancement is totally justified and is supported by
12 the information that we have provided that was developed during
13 the actual investigation.

14 There is also a report, I think, concerning the actual
15 evidence recovery which is -- as Government Exhibit 4, which
16 recounts the recovery of the weapon, the .357 magnum referred
17 to in the conversations at Baird's residence in the basement.

18 That's all we would really have on that, Your Honor.

19 THE COURT: Thank you, sir.

20 Mr. Rymsza, anything further on this first objection?

21 MR. RYMSZA: Just briefly.

22 THE COURT: Go right ahead.

23 MR. RYMSZA: With regard to this, I would think,
24 Judge, that the fact that Mr. Henry -- that Mr. Baird has this

1 prior criminal history really is nothing more than a red
2 herring in this case, because the fact of the matter is that
3 they are trying to put this into a box. There is nothing to
4 support this enhancement.

5 I realize the Government will say that there is a
6 logical inference and this -- it's not logical to me. The fact
7 of the matter is that a firearm was found and it has nothing to
8 do with the trafficking of narcotics or -- purported narcotics
9 or firearms. It happened in a residence, supposedly.

10 And we don't need forensics. I'm not suggesting that
11 there needs to be forensics. But there is a 302 report.
12 There's a 302 report from the F.B.I. who went into the
13 residence, went looking for a firearm. I would like to think
14 that if this existed, there would be some notation of it. But
15 the fact of the matter is there isn't. And why is that?
16 Because it didn't happen.

17 THE COURT: Thank you. I'm going to sustain this
18 objection. The Government, of course, bears the burden of
19 proving that a sentencing enhancement applies. Counsel, I'm
20 referencing United States against McDowell found at 888 F.2d,
21 page 285, a decision of our Court of Appeals from 1989.

22 With respect to the alleged gunshot fired by
23 Mr. Baird, the Government has not met this burden. This
24 allegation amounts to a little more than a story Mr. Baird

1 perhaps told one time. The Government has not identified the
2 corroborating evidence or even the identity of the individual
3 allegedly fired at. Furthermore, and perhaps most critically,
4 from this Court's perspective, there is no indication that this
5 incident was in any way connected to the charged conduct other
6 than Mr. Baird told the story of it during the movement of
7 contraband. This is not sufficient to apply this enhancement
8 in this case. That objection, as I noted, is sustained.

9 The next objection from the Defense is the mitigating
10 role adjustment referencing or reference -- excuse me -- United
11 States Sentencing Guideline, Section 3B1.2.

12 Mr. Rymsza, would you like to speak to this objection?

13 MR. RYMSZA: Yes, Judge, just briefly.

14 THE COURT: Go right ahead.

15 MR. RYMSZA: And frankly, I'm not going to be too
16 ambitious. I -- the Court can impose a minimal or minor role
17 adjustment anywhere from four to two levels. I'm not being
18 greedy. I would be willing to accept Mr. Baird to any such
19 minor role enhancement. I think it is applicable here for the
20 following reasons.

21 We have met all of the criteria that is required under
22 3B1.2. The fact that there are multiple participants in this
23 case. Mr. Steever was identified as the leader of the case.
24 The -- as the evidence bears out, that it was Mr. Baird was

1 only quote/unquote recruited by Mr. Steever, a childhood
2 friend, at the last minute. And according to Mr. Steever, the
3 reason why he was recruited was because he was, quote, local
4 and available.

5 Mr. Baird was only involved in this criminal activity
6 for approximately a month. And in fact, the -- in fact, the --
7 one of the individuals -- oh, I believe it was the testimony at
8 the Lough and Robards hearing in December of 2018 that the
9 testimony was, quote, Nobody had ever heard of Mr. Baird, which
10 again, shows that he was a peripheral or minor participant in
11 this case.

12 And finally, in terms of Mr. Baird's alleged role in
13 this case, his role, as I mentioned, was really peripheral. He
14 was brought in to conduct surveillance, or I think the term was
15 used muscle, in the case.

16 So for all those reasons we believe that a minor or
17 minimal role adjustment is appropriate.

18 THE COURT: Thank you, sir.

19 Mr. Rocktashel, do you care to speak to this second
20 objection by the Defense?

21 MR. ROCKTASHEL: Certainly, Your Honor. I don't think
22 we can leave this issue without noting that the defendant held
23 the role as president of the ASF. And as the Court knows from
24 some background materials in the presentence report and the

1 pretrial motions hearing that was conducted with respect to two
2 other co-defendants, that there was a change in leadership in
3 this cell of the Aryan Strike Force; that Ronald Pulcher was
4 arrested by the Pennsylvania State Police on firearms charges
5 and drug manufacturing charges. And when he was taken out as
6 the president, due to his arrest and incarceration, this
7 defendant became the president of the group.

8 Josh Steever certainly was an organizing force in his
9 own right as founder of the ASF. But this defendant held the
10 role of president. As he described, and I think it's recounted
11 pretty vividly in the defense conduct, he was not afraid to get
12 his hands dirty.

13 He was described -- in fact, that's how he described
14 himself at the El Rodeo meeting, somebody that was not afraid
15 to get his hands dirty. He described various features of the
16 conspiracy that really only he would know concerning Baird's
17 acquisition of a firearm, of a shotgun and Baird's -- strike
18 that -- Steever's acquisition of a firearm and Steever's
19 ability to obtain firearms from other individuals who were
20 holding firearms for him.

21 That clearly shows that he was an intimate of Steever,
22 to the extent Steever was an organizer and founder of the
23 group. As the president, you would certainly expect him to
24 have that.

1 One of the factors that's important in assessing an
2 individual's relative role in the case vis-à-vis other people
3 is how much on the inside was he with respect to information
4 regarding the scope of the conspiracy, the scope of the
5 network, the activities of the group.

6 It's pretty clear that as somebody not afraid to get
7 his hands dirty, someone that knew information at the inner
8 circle there concerning the founder's access to guns, that's
9 certainly something that shows his position was not a minor
10 one.

11 Again, I'll reiterate that our conception of the
12 pecking order in this conspiracy is that individuals like
13 Connor Dykes, who withdrew from the conspiracy, Jacob Robards,
14 who had to withdraw from the conspiracy due to illness, those
15 occupy the lower strata of this organization.

16 This defendant, Henry Baird, was the president. He
17 went on two of these trips. It was toward the latter part of
18 the cycle of trips. But we must keep in mind that this
19 activity was being investigated between December of 2016 and
20 into April of 2017. So him being involved in one month,
21 relatively speaking, isn't necessarily insubstantial in the
22 scheme of things.

23 So for all of these reasons, Your Honor, the fact that
24 this defendant was the president and occupied that kind of

1 organizational leadership position, certainly establishes -- we
2 are not saying he's entitled to an organizer adjustment. That
3 may be better applied to another co-defendant in the case. But
4 he certainly is not among the least culpable in this case,
5 particularly given the information that he had inside
6 information.

7 Thank you, Your Honor.

8 THE COURT: Thank you, sir.

9 Mr. Rymsza, anything further on this particular
10 objection?

11 MR. RYMSZA: Just the fact that the reason why he was
12 intimate with Mr. Steever was because he had a childhood
13 friendship with Mr. Steever. You can't ignore the fact that he
14 was involved a month. He wasn't the progenitor of this scheme.
15 He was involved in two of these -- traveled twice within that
16 period of time. So I believe it makes him a minor or minimal
17 role.

18 THE COURT: Thank you.

19 I'm going to overrule this objection. A defendant may
20 obtain a four-level reduction under United States Sentencing
21 Guideline 3B1.2A if, as noted in application note four, he is
22 plainly among the least culpable of those involved in the
23 conduct of a group and lacked knowledge or understanding of the
24 scope and structure of the enterprise and of the activity of

1 others.

2 In the alternative, a two-level reduction may apply to
3 a defendant who does not qualify for the four-level reduction
4 but is less culpable than most other participants in the
5 criminal activity. Neither of these mitigating factors applies
6 to Mr. Baird. His conduct in the conspiracy was substantially
7 similar to that of other participants who transported the
8 contraband. The fact that he participated in only two of the
9 four transactions is already reflected in the base offense
10 level.

11 And furthermore, as Mr. Baird was the president of the
12 Aryan Strike Force, he did not lack knowledge of the scope and
13 the structure of the enterprise.

14 For these reasons, I overrule the objections.

15 I now believe I have resolved all objections to the
16 presentence report.

17 I note now that Mr. Baird's criminal history category
18 is three. His offense level is 31. His advisory guideline
19 range of imprisonment is 135 to 168 months.

20 I'm now going to turn to the Defendant's motion for
21 departure. There's a motion for departure here made for
22 coercion and duress referenced at United States Sentencing
23 Guideline, Section 5K2.12.

24 Mr. Rymsza, would you care to speak to this motion for

1 departure for coercion and duress?

2 MR. RYMSZA: Certainly. Judge, for the record, I did
3 submit a detailed sentencing memorandum that also addressed
4 these objections and this departure and variances, as well. So
5 I won't --

6 THE COURT: You have, indeed. I thank you for that,
7 and I have read that.

8 MR. RYMSZA: So I don't want to say too much more than
9 what's in here. But I just want to highlight. With regard to
10 this departure, really what I think this amounts to is an
11 aggressive encouragement for Mr. Baird to participate in this
12 offense. Because of his prior contact with this organization,
13 the fact that he's been assaulted in the past, he's aware of
14 the danger of these individuals. He didn't actively seek to
15 join this organization, as I've mentioned previously. He was
16 recruited by Mr. Steever.

17 Mr. Steever has been characterized as being explosive
18 and angry. Attached to -- in our presentence report, Exhibit
19 B, there's a 302 report that suggests that it's been said that
20 Mike, Russ and Pressley were the real deal, and they could make
21 a phone call and you'd be dead.

22 At one point, too, Russ told Mr. Baird that if he
23 touched the product, he would, quote, put a bullet in his head.
24 So there was a considerable amount of pressure, and I say

1 coercion placed upon Mr. Baird since he had some previous ties
2 to this organization but divorced himself from it. And it was
3 essentially felt that he had no way out rather than just to
4 participate.

5 So for those reasons, we think the departure should be
6 granted.

7 THE COURT: Thank you.

8 Mr. Rocktashel, do you care to speak to this motion
9 for departure referencing coercion and duress?

10 MR. ROCKTASHEL: Certainly, Your Honor.

11 And I won't belabor it because I know the Court is
12 intimately familiar, from having the hearing, with the El Rodeo
13 meeting. But as the Court found in denying motions in its
14 memorandum opinion, these defendants, including this defendant,
15 were given multiple opportunities through conversations with
16 the undercover to withdraw or get out of the conspiracy. And
17 two of them did. This individual did not. And that itself
18 speaks volumes as to whether or not he was coerced or under
19 duress when he committed this offense.

20 In addition, the -- even if we call it mere
21 braggadocio, he obviously feels confident in reporting events
22 of the use of brass knuckles and guns, and in his own words,
23 he's not afraid to get his hands dirty. Sure, Steever may be
24 an explosive and volatile individual. But this individual, as

1 the president of the organization there, had no qualms about
2 participating, even after being advised through the undercovers
3 of the potential risks, including being arrested and the
4 quantity of drugs and guns that were going to be involved.

5 So that's hardly a man whose suffering from duress or
6 coercion. It sounds like somebody who's all in because he
7 wants to be in.

8 Thank you, Your Honor.

9 THE COURT: Thank you.

10 Mr. Rymsza, anything further regarding your motion?

11 MR. RYMSZA: I'm sorry, Judge. With regard to that
12 departure?

13 THE COURT: Yes. Anything further regarding that
14 motion itself?

15 MR. RYMSZA: No. Thank you.

16 THE COURT: Thank you. This motion is denied. The
17 facts in the record do not support the inference that Mr. Baird
18 committed the offense because of either coercion or duress.

19 Mr. Baird was the president of Aryan Strike Force. In
20 meetings with the undercover agents, Mr. Baird expressed that
21 he was, quote, Not afraid to get his hands dirty, end quote.
22 And he advised them that he could obtain stolen firearms if
23 they needed them.

24 There is no evidence of a specific threat against

1 Mr. Baird in the record. And to the extent that Mr. Baird felt
2 threatened in participating, that threat was not sufficiently
3 concrete to warrant a downward departure under section -- under
4 United States Guideline, Section 5K2.12.

5 So accordingly then, this Court will adopt the factual
6 findings of the presentence report as well as the findings
7 placed on the record today.

8 As I noted a little while ago, the criminal history
9 category for Mr. Baird is three. His offense level is 31.
10 There's a guideline range of imprisonment of between 135 and
11 168 months.

12 Mrs. Johnson, you are here this afternoon on behalf of
13 the probation office. Do you agree that that calculation is
14 correct?

15 PROBATION OFFICER JOHNSON: Yes, Your Honor.

16 THE COURT: Thank you.

17 Mr. Rymsza, as I noted a few moments ago, I have, of
18 course, received and read your sentencing memorandum. Thank
19 you for that. What would you care to say today on Mr. Baird's
20 behalf by way of oral advocacy?

21 MR. RYMSZA: Thank you, Judge. I just want to
22 highlight a couple of the salient features, which I believe
23 weigh in favor of a further variance and a mitigated sentence.
24 I realize that much of the steam is taken out of me since there

1 is a ten-year mandatory minimum in this case.

2 So, I'm sure it will come as no surprise that I'm
3 advocating for just that, a 120 month sentence. And I think,
4 Judge, that when you look at all of the facts and circumstances
5 of this case, I don't think it would be inappropriate or shock
6 the conscience to get to 120 months.

7 First of all, I did mention in my sentencing
8 memorandum about the drug weight in this case being overstated.
9 The drug weight, of course, was 100 percent orchestrated by the
10 federal government in this case. They determined at all times
11 the drug weight and, indeed, the drug type in this case.

12 And as I've mentioned before, Mr. Baird was involved
13 in just two of the transactions, was involved for approximately
14 a month. There was never any specific agreement of quantity to
15 be purchased by him. He didn't negotiate any quantities. And
16 in addition, I think it's safe to say that the methamphetamine
17 guidelines themselves produce unwarranted disparities,
18 primarily because of the fact that the meth guidelines are
19 quantified based upon purity.

20 So I think, again, you've got the Government in this
21 case who did orchestrate both the type of drug and the
22 quantity. I believe that that, in itself, deserves a variance
23 and that would be found in application note five under 2D1.1.

24 In addition, I think it's safe to say that the

1 Government's case here was based entirely -- was quite a
2 theatrical performance. It was all play acting. There was no
3 victim in this case. There was no -- I would take exception
4 whether or not the receivers in this case actually qualify as
5 firearms under the Code of Federal Regulations that we cited in
6 our sentencing memorandum. I don't think the receivers in this
7 case were actually firearms.

8 But nevertheless, there was also no drugs in this
9 case. So every aspect of this case was manufactured by the
10 Government. And the Court was able to see this firsthand based
11 upon a hearing, an evidentiary hearing, involving Mr. Lough and
12 Mr. Robards, the co-defendants in this case, in December of
13 2018.

14 I suggest, Judge, that a variance is required also
15 based upon two specific arguments in this case. First is a
16 sentencing entrapment argument that we have raised as well as a
17 sentencing manipulation. These are two very distinct
18 propositions. The sentencing entrapment specifies deals with
19 the -- when the conduct leads an otherwise indisposed defendant
20 to dealing in larger quantities or types of drugs that result
21 in a higher sentence. And that's precisely what happened here.

22 In addition, sentencing manipulation is where the
23 Government unfairly exaggerates the sentencing range by
24 engaging in a longer-than-needed investigation. Again, this

1 was the -- this was specifically -- this entire episode was
2 organized by the Government. They determined when and where
3 the methamphetamine would be delivered, when the runs would
4 occur, which illegal items to transport, who would be doing the
5 transport, the weight of the drugs, the types of receivers, the
6 money for the receivers, the type of drug, as I mentioned, the
7 amount of drugs. They picked the dates on which the runs would
8 occur. They picked the location. They came up with the idea
9 of using the gift cards in the case.

10 And they did this all the while knowing that this
11 organization, this Aryan Strike Force, was not a drug
12 trafficking organization. And there was no criminal activity
13 by the Aryan Strike Force that was ever uncovered other than
14 this -- than this activity. So this isn't a case where the
15 Government initiated -- or rather infiltrates some previous
16 drug activity or drug trafficking activity. This was a case
17 where the Government instigated the crime and the criminal
18 activity in question.

19 Judge, you, in your opinion in this -- in that case,
20 you even acknowledged in your March decision about how the
21 Government was -- you did find disconcerting, my words, that
22 the Government did control the quantity and the weight of these
23 drugs that did, in fact, end up triggering a mandatory minimum
24 in this case. The Government certainly could have used it as

1 some other type of drug, marijuana, something that was --
2 sentencing guidelines that may be less draconian than the
3 methamphetamine guidelines. They didn't. They chose all this.
4 This chose it very, very carefully, because they knew that this
5 would be a way to achieve a higher sentence.

6 I also mentioned in terms of a mitigated range --
7 excuse me -- yes, a mitigated range sentence below the
8 guidelines. I did just want to highlight a few things
9 regarding Mr. Baird. And I think it's important to judge
10 Mr. Baird's actions in this case through the eyes of certainly
11 how he was raised and the values that he had.

12 As I mentioned in my sentencing memorandum, he did
13 have -- as people who often appear before this Court, had a
14 very difficult home life, a home life that had little
15 affection, little love. And I would submit that that rejection
16 breeds anger and hostility. That certainly led Mr. Baird to
17 the impulsive behavior, the belligerent behavior.

18 In grade school he was -- or I believe it was ninth
19 grade he did receive a psychological evaluation that he was
20 designated emotionally disturbed. Looking for that support, he
21 found it in music. He found it in the punk rock music scene
22 and found it in, unfortunately, the white supremacy movement,
23 which he was easily influenced by other people.

24 But I think notwithstanding that, it bears

1 highlighting that he has renounced that group. We did provide
2 to the Court not only photos but also video where he has
3 renounced that and sought assistance on his own to get the
4 tattoos removed that were on his face.

5 He is very happily married to his wife, Heidi Baird.
6 She is here. You are going to hear from her in a minute.
7 Mr. Baird was on track. He was on state parole. He was due to
8 get release from state parole within a matter of weeks before
9 he was arrested. The plan was that he and his wife, Heidi,
10 would move to Utah where Mr. Baird has family.

11 While he's been incarcerated, he has been in positions
12 of trust. He's been incarcerated now for over three years.
13 He's had positions of trust in the jail at Clinton County
14 Correctional Facility. I mentioned that I have attached some
15 artwork to the sentencing memorandum. He is also proficient in
16 sign language.

17 And I think it's important that the -- at the end of
18 all this, the conduct that you're going to sentence him for
19 really amounts to conduct that was -- that took a total of
20 about 30 days that Mr. Baird was involved with. I think it's
21 safe to say that while his role was not unimportant, it was
22 still a peripheral role. This wasn't a violent crime. There
23 were no weapons used. There were no victims. I think from his
24 past conduct -- certainly his past conduct while he was on

1 parole, up until at least the very end, and certainly while
2 he's been incarcerated, he's been able to show a respect for
3 the law. He's had successful periods of supervision when he
4 was on it in New Jersey. And he does have a -- maintains a
5 very positive attitude, despite being locked up for three
6 years.

7 So with that, Judge, we believe that a sentence of not
8 greater than 120 months would be appropriate in this case.

9 THE COURT: Thank you.

10 Mr. Rymsza, before I hear from Mr. Baird, to the
11 extent he would like to address the Court, would you like to
12 call Mrs. Baird as a witness to speak to the Court?

13 MR. RYMSZA: Sure.

14 THE COURT: Mrs. Baird, if you would like to speak to
15 me, come up. There's a microphone tipped up on the counsel
16 table directly behind Mr. Rymsza. Right there. Thank you.

17 THE WITNESS: Right here?

18 THE COURT: Yes, that's fine. Thank you. Would you
19 give your name for the record, ma'am?

20 THE WITNESS: My name is Heidi Baird. Henry is my
21 husband. I know you don't have a lot of time for me to speak.
22 Basically I'm just trying to explain the importance this man is
23 to me and our family and the kind of person he is at home and
24 the home that we built and we share and -- oh, this is really

1 difficult. I apologize.

2 Basically in regards to a letter that he had recently
3 submitted, and I'm not going to go into, my main concerns are
4 his possibility to go to Fairton so he can focus on
5 rehabilitation and stay on track and to be continuing to make
6 positive -- you know, he's been on a really positive track, and
7 I want to see him continue on that positive track. I believe
8 that FCI Fairton has the needs that the -- the devices for him
9 to move forward in life, to come home and have a future with me
10 and his family.

11 I'm a registered nurse. I work in juvenile and
12 adolescent delinquency. And you know, I see this every day and
13 how children who are not given certain things are life tend to
14 make bad choices. And you know, Henry talks all the time about
15 wanting to pay it forward and reaching out and trying to speak
16 with young people to prevent them from possibly making bad
17 choices in life that, you know, he has done in the past. We
18 know that.

19 I'm not very good at public speaking. I apologize.
20 Just, I love him. He's a good man and -- I'm sorry. I just
21 want to see him have a chance to make a positive difference.
22 That's all he ever speaks of. I just want to see him have the
23 opportunity to do that.

24 THE COURT: Thank you.

1 MR. RYMSZA: Any questions?

2 THE WITNESS: Thank you.

3 MR. RYMSZA: One second.

4 THE COURT: Mr. Rocktashel, I assume you have no
5 questions for Mrs. Baird.

6 MR. ROCKTASHEL: No, Your Honor. Thank you.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: You're welcome.

9 (Witness excused.)

10 THE COURT: Mr. Rymsza, any other witnesses that would
11 care to speak to the Court?

12 MR. RYMSZA: No, Your Honor. Thank you.

13 THE COURT: Thank you.

14 Mr. Baird, you now have the right of allocution; that
15 is the right to address this Court yourself regarding what you
16 believe I should consider in imposing a sentence today, and for
17 that matter to request a specific sentence.

18 Mr. Baird, you don't have to speak to me. But if you
19 would like to speak to me directly, you may do so.

20 Alternatively, if you have a statement or remarks that you
21 would like to read to me or have Mr. Rymsza read to me in your
22 stead, you may do so at this time.

23 I do note, sir, that you forwarded me a letter some
24 months ago. This matter was scheduled for a sentencing hearing

1 about 90 days ago. This letter was submitted prior to that
2 now-aborted March 2020 sentencing date that's been continued,
3 of course, until today. So I do have that correspondence. I
4 have read that. Thank you for that.

5 But if there is anything you would care to say to me
6 today, you may do so.

7 THE DEFENDANT: Thank you, Your Honor, for allowing me
8 the chance to -- can you hear me?

9 THE COURT: I can.

10 THE DEFENDANT: -- to speak. The first thing I would
11 like to do is just apologize to the Court and my wife and
12 family for even being in this position. This is not where I
13 figured I would be at 52 years of age. And I worked hard to
14 try to disassociate myself from this negative lifestyle, to
15 make a positive imprint in society and to the youth. I have a
16 book and everything that I'm trying to still do that with. I
17 have learned a lot in this ordeal.

18 Today is like probably the lowest day of my life, that
19 I feel the worst I have ever felt about myself to have to put
20 my wife through something like that, to have her upset over
21 poor decisions that I made. Again, I apologize for that. And
22 I have learned the importance, while being incarcerated, of
23 family and the decisions that you make influence those around
24 you and that when you make a mistake, you hurt the ones you

1 love the most. And that's not the -- not a good thing to do.

2 I don't want to occupy a lot of your time. I was just
3 a little bit upset so it's kind of hard for me to focus.

4 Hearing my wife speak was pretty hard on me. Maybe I deserved
5 that.

6 So I just want to apologize again to you for being
7 here and let you know that hopefully I can use this as an
8 example to the youth to maybe to help somebody else change, or
9 I can still change this into some kind of positive. I'm going
10 to try and do that. I'm going to, maybe like she said, go to
11 Fairton so I can disassociate myself from the negative
12 lifestyle and try to pay it forward. That's what I'm
13 determined to do. I'm going to make -- no matter what happens,
14 I'm going to do something positive out of this and I'm going to
15 help somebody.

16 Thank you for your time.

17 THE COURT: Thank you, sir.

18 I should also note, Mr. Rymsza, that you had a number
19 of attachments that were attached to your sentencing
20 memorandum. I have read all of that, viewed all of that.
21 Thank you for that. To the extent that was forwarded by any
22 members of Mr. Baird's family, I thank them, as well. The
23 Court has taken note of that.

24 With that said, Mr. Rocktashel, what's the

1 Government's position with regard to the disposition of
2 Mr. Baird's case today?

3 MR. ROCKTASHEL: Your Honor, we recommend that the
4 Court impose a sentence within the guideline range that you
5 have fixed as a result of your various rulings. And we ask the
6 Court to reject this notion of sentencing manipulation or any
7 other kind of unfairness to the defendant as a result of the
8 way the investigation was conducted.

9 First of all, as this Court found in balancing various
10 factors, the issue of whether or not the Government controlled
11 all the features of the case were neutral. The defendants in
12 this case had the opportunity to withdraw. They could make
13 decisions. This defendant could make decisions to withdraw
14 from the conduct.

15 In addition, the defendant did not have control over
16 who would participate. This defendant was the president. He
17 stepped up, when asked by Steever to take the place of people
18 like Robards and Dykes who weren't available to participate.
19 As the Court found, and we think properly so, that factor
20 weighed mutually in the balance here.

21 In terms of whether or not the Government was the
22 instigator or the motivating force here with respect to the
23 drug weight, the Court aptly noted the need for the scenario of
24 this transport of meth and firearms parts to be plausible, to

1 be realistic. In fact, that's consistent with the Court of
2 Appeals' decision in Washington, as the Court is familiar with
3 the case of the United States versus Washington was one where
4 the Circuit looked at the question of sentencing manipulation
5 as it pertains to drug quantity. That's really the only
6 factual basis for the Defendant's argument here.

7 The Court, after surveying the various other Court of
8 Appeals decisions noted that other Courts of Appeals roundly
9 rejected claims that amounts greater, in that case, five
10 kilograms of cocaine or even ten kilograms, amount to
11 sentencing manipulation. And it cited a number of cases from
12 other circuits.

13 In this case the amount of drugs was methamphetamine.
14 This defendant was not charged, as this Court noted, with the
15 first transport of drugs in December of 2017.

16 In addition, as the Court has determined and the
17 Government has not objected to this, the defendant has only
18 been held responsible for the two runs that he actually
19 participated in.

20 So it isn't -- the Court has taken a measured approach
21 here in applying the drugs that he's responsible for. As the
22 Court of Appeals noted in Washington, that factor certainly
23 weighs against any kind of finding of sentencing manipulation.

24 In fact, the Court noted there that in the scenario

1 that was the subject of that case, the case agent, as here,
2 described the scenario as having to be realistic, otherwise it
3 might be questioned about people that were involved in the
4 crime. Likewise, in this case, the scenario needed to be
5 plausible in order to keep the investigation going in order to
6 identify everybody who is involved, everyone who is a
7 participant. And as the investigation unfolded, and as this
8 Court knows, various people no longer participated but new
9 people, additional people, were included, including Defendant
10 Lough and this defendant, Baird, who were brought in.

11 So for those reasons, Your Honor, we ask you to reject
12 the sentencing manipulation argument that's been advanced here
13 or sentencing entrapment. No entrapment lies here. It's
14 pretty clear that, as this Court found, this was a preexisting
15 organization that was infiltrated through undercover
16 operatives. This defendant, like his co-defendants, clearly
17 has had a predisposition to commit this offense.

18 The whole purpose of transporting the drugs was to
19 generate funds for this group and their movement to obtain
20 firearms to facilitate their violent goals.

21 So for those reasons we think the Court should not
22 vary from the guidelines on that basis. One thing that we
23 haven't heard a lot about from the Defense side of the room is
24 the Defendant's criminal history, which is long and

1 significant. And it goes back as far as age 16. It's
2 dominated by violent offenses. I'm including violent offenses
3 committed when he was a juvenile. Offenses involving assault
4 where he received two to six years in Broome County Court in
5 New York. He was paroled in that case. And the parole was
6 revoked.

7 There was a spade of intervening disorderly conducts
8 and criminal trespass and possession of marijuana charges. And
9 really, the capstone on his criminal history, if this offense
10 is not it, is his conviction at age 30 for aggravated assault
11 causing serious bodily injury, two counts, and possession of a
12 weapon for unlawful use in Burlington County, New Jersey, for
13 which he pled guilty, received 22 years in prison, was
14 resentenced to 15 years imprisonment and then was parole
15 ineligible for six years.

16 He eventually was paroled and he was on parole when he
17 committed this offense. And in that particular offense he
18 entered an apartment without permission, pointed a handgun at a
19 victim, told the victim he was going to kill him. And that
20 same day he forced himself into another apartment in the same
21 complex and struck a woman numerous times with a baseball bat.

22 Whether it's boasting or puffery or not, it certainly
23 is compelling for the F.B.I. to want to investigate somebody
24 with this kind of background. And it was certainly fair and

1 reasonable for the undercover to find out a little bit more
2 about what Josh Steever described in terms of a beating applied
3 by this defendant using brass knuckles and brandishing a
4 firearm.

5 So for all of these reasons, Your Honor, we think that
6 the Court should impose a sentence within the guideline range.
7 We think that a sentence within that range is sufficient but
8 not too great to meet the objections under Section 3553,
9 subsection A. This offense is serious. The drugs have been
10 described as phony and fake. Of course they were. This was an
11 operation intended to ferret out all of the members of this
12 conspiracy, to identify all of those involved. And that's what
13 happened in this case, including this defendant.

14 And for all those reasons, we think a sentence within
15 that range is a just and fair one under all the circumstances.

16 Thank you, Your Honor.

17 THE COURT: Thank you, sir.

18 Mr. Rymsza, are there any other matters regarding the
19 presentence report itself that should be resolved prior to my
20 imposition of sentence today?

21 MR. RYMSZA: No, Judge. Thank you.

22 THE COURT: Mr. Rocktashel, likewise, are there any
23 other matters you care to raise with me regarding the
24 presentence report itself?

1 MR. ROCKTASHEL: No, Your Honor. Thank you.

2 THE COURT: Thank you, sir.

3 Mr. Baird, are there any other matters that you would
4 like to raise with me before I impose sentence on you today?

5 THE DEFENDANT: No, sir.

6 THE COURT: Thank you.

7 The sentence then that I'm about to impose complies
8 with the purposes set forth at Title 18 of the United States
9 Code at Section 3553(a)(2). It reflects the seriousness of
10 this offense. It promotes respect for the law. It provides
11 just punishment for the offense. It affords adequate
12 deterrence to criminal conduct. It protects the public from
13 further crimes of this defendant and provides Mr. Baird with
14 any needed educational or vocational training, medical care or
15 other correctional treatment in the most effective manner.

16 The sentence also reflects this Court's full
17 consideration of all factors relevant to the sentencing
18 determination, including the nature and the circumstances of
19 the offense, together with the history and characteristics of
20 this defendant, the kinds of sentences available to the Court,
21 the advisory sentence prescribed by the United States
22 Sentencing Commission's guidelines manual, as well as any
23 pertinent policy statement of the Commission, the need to avoid
24 unwarranted sentencing disparities among defendants with

1 similar records who have been found guilty of similar conduct
2 and the need to provide restitution to any victims of the
3 offense.

4 Regarding the nature and the circumstances of this
5 offense, Mr. Baird was the president of the Aryan Strike Force,
6 a white nationalist organization that advocates the use of
7 violence to advance its political goals.

8 Mr. Baird, along with other members of his
9 organization, conspired to transport multiple pounds of
10 methamphetamine. Undercover agents supplied this meth, which
11 was, in fact, merely imitation methamphetamine.

12 Regarding the history and characteristics of this
13 defendant, Mr. Baird reported having a difficult upbringing.
14 He struggled with substance abuse as well as anxiety and
15 depression. Mr. Baird has earned a GED. He has prior
16 convictions involving both drugs and violence.

17 Regarding the need for the sentence imposed to reflect
18 the seriousness of the offense and the need for the sentence
19 imposed to provide just punishment for the offense, Mr. Baird
20 conspired to transport large quantities of methamphetamine and
21 intended to use the proceeds from these transactions to advance
22 the violent aims of a terrorist organization. His conduct
23 obviously presents a wide range of concerns for community,
24 morally, physical safety and otherwise.

1 There is noting, however, that the undercover agents
2 approached the Aryan Strike Force with the proposal and
3 supplied the imitation contraband.

4 Regarding the need for the sentence imposed to promote
5 respect for the law, the need for the sentence imposed to
6 provide adequate deterrence to criminal conduct, and the need
7 for the sentence imposed to protect the public from further
8 crimes of this defendant, Mr. Baird presents a risk of
9 recidivism.

10 Regarding the kinds of sentences available to the
11 Court, I note that the maximum penalty for the offense of
12 conspiracy to distribute 500 grams or more of methamphetamine,
13 in violation of Title 21 of the United States Code at Section
14 846, is life imprisonment, a fine of \$10 million, together with
15 five years of supervised release.

16 This Court specifically finds and states for the
17 record today that there is no sentencing manipulation here.
18 There is no sentencing entrapment. The Court explicitly
19 rejects those arguments presented by the Defense.

20 I think the Government has set forth, very adroitly,
21 in this Court's view, why there is no sentencing manipulation
22 and no sentencing entrapment in Mr. Baird's case.

23 Regarding the advisory sentence prescribed by the
24 United States Sentencing Commission's guidelines manual, I have

1 already noted that the defendant's criminal history category
2 here is three, his offense level is 31, and there's a guideline
3 range of imprisonment of between 135 and 168 months.

4 I note, however, that the sentencing guidelines are
5 merely advisory. So after balancing the factors at section
6 3553(a) and given my full consideration of each of these
7 factors in the instant case, I find that the sentence about to
8 be imposed to be reasonable, appropriate and not greater than
9 necessary to meet sentencing objectives.

10 The Court will impose the following sentence.

11 Mr. Baird, please rise.

12 Pursuant then to the Sentencing Reform Act of 1984, it
13 is the judgment of this Court, on count seven, that the
14 defendant, Henry Lambert Baird, is hereby committed to the
15 custody of the United States Bureau of Prisons to be imprisoned
16 for a term of 168 months.

17 This Court finds that Mr. Baird has the ability to pay
18 a fine below the guideline range.

19 It is Ordered then that this defendant shall pay to
20 the clerk of the United States District Court the sum of \$800,
21 consisting of a special assessment of \$100 due immediately,
22 together with a fine of \$700.

23 During his term of imprisonment, the fine is payable
24 every three months in an amount after a telephone allowance

1 equal to 50 percent of the funds deposited into the defendant's
2 inmate trust fund account.

3 In the event that the fine is not paid in full prior
4 to commencement of supervised release, Mr. Baird shall, as a
5 condition of supervised release, satisfy the amount due in
6 monthly installments of no less than \$20 to commence 30 days
7 after release from confinement.

8 Upon his release from imprisonment, Mr. Baird shall be
9 placed on supervised release for a term of five years. He must
10 report to the probation office in the federal judicial district
11 where he is authorized to reside within 72 hours of his release
12 from imprisonment unless the probation officer instructs him to
13 report to a different probation office or a different
14 timeframe. After initially reporting to the probation office,
15 he will receive instructions from the Court or the probation
16 officer about how and when he must report to the probation
17 officer. He must report to the probation officer as duly
18 instructed.

19 While on supervised release, Mr. Baird shall not
20 commit any federal, state or local crimes and shall not possess
21 a dangerous weapon. Mr. Baird shall comply with the standard
22 conditions that have been adopted by this Court, together with
23 the following additional conditions:

24 One, Mr. Baird shall apply all monies received from

1 income tax refunds, lottery winnings, judgments and/or other
2 anticipated or unexpected financial gains to the outstanding
3 court-ordered financial obligation;

4 Two, Mr. Baird must provide the probation officer with
5 access to any requested financial information and authorize the
6 release of any financial information. The probation office may
7 share that financial information with the office of the United
8 States attorney;

9 Three, Mr. Baird must not incur new credit charges or
10 open additional lines of credit without the approval of the
11 probation officer;

12 Four, because the judgment imposes a financial
13 penalty, Mr. Baird must pay the financial penalty in accordance
14 of the scheduled payment sheet of this judgment. He must also
15 notify the Court of any changes in economic circumstances that
16 might affect his ability to pay this financial penalty;

17 Five, Mr. Baird must refrain from any unlawful use of
18 a controlled substance. He must submit to one drug test within
19 15 days of release from imprisonment and at least two periodic
20 drug tests thereafter as determined by the Court. He must not
21 attempt to obstruct or tamper with the testing methods;

22 Six, Mr. Baird must cooperate in the collection of a
23 DNA sample as directed by the probation officer;

24 Seven, Mr. Baird must submit his person, property,

1 house, residence, vehicle, papers, computers, (as defined at
2 Title 18 of the United States Code at Section 1030(e)(1)),
3 other electronic communications or data storage devices or
4 media or his office to a search conducted by a United States
5 probation officer.

6 Failure to submit to a search may be grounds for
7 revocation of release. You must warn any other occupants of
8 the premises that it may be subject to searches pursuant to
9 this condition. The probation officer may conduct a search
10 under this condition only when reasonable suspicion exists that
11 he has violated a condition of supervision and that the areas
12 to be searched contain evidence of this violation. Any search
13 must be conducted at a reasonable time and in a reasonable
14 manner;

15 Eight, Mr. Baird must not communicate or otherwise
16 interact with (or become a member in), any known member of a
17 white supremacist movement organization;

18 Nine, Mr. Baird must participate in a substance abuse
19 treatment and must follow the rules and regulations of that
20 program. The probation officer will supervise his
21 participation in the program which could include an evaluation
22 and completion of any recommended treatment;

23 And ten, Mr. Baird must participate in a mental health
24 treatment program and he must follow the rules and regulations

1 of that program. The probation officer, in consultation with
2 the treatment provider, will supervise Mr. Baird's
3 participation in the program, which could include the
4 evaluation and completion of any recommended treatment.
5 Mr. Baird must take all mental health medications that are
6 prescribed by his treating physician.

7 Additionally, Mr. Baird shall forfeit to the
8 Government of the United States all assets listed in the
9 forfeiture allegation in the indictment.

10 Mr. Baird, it is my determination that the sentence
11 imposed today is sufficient but not greater than necessary, to
12 comply with the purposes set forth at Title 18 of the United
13 States Code at Section 3553(a)(2).

14 I will note that I have considered all seven factors
15 as set forth at Title 18 of the United States Code at Section
16 3553(a). Recognizing that the guidelines and policy statements
17 and amendments to the same as referenced at Title 18 of the
18 United States Code, Section 3553(a)(4) and (5) are advisory
19 only, this Court finds their application in this case
20 reasonable and appropriate under the totality of the
21 circumstances.

22 Mr. Baird, additionally, I advise you now of your
23 right to appeal your conviction and sentence to the United
24 States Court of Appeals for the Third Circuit sitting in

1 Philadelphia.

2 With few exceptions, any notice of appeal must be
3 filed within 14 days. If you are unable to pay the costs of an
4 appeal, you may apply for leave to appeal in forma pauperis,
5 which means that if approved, counsel will be appointed for you
6 and you will not be required to pay any costs.

7 Mr. Rymsza, there has been some reference, at least by
8 your client, as to a special prison designation. Could I hear
9 from you about that now, to the extent you care to make that
10 recommendation?

11 MR. RYMSZA: Yes, Judge. We would ask that the Court
12 make a judicial recommendation to the Bureau of Prisons that
13 Mr. Baird be placed at FCI in Fairton, New Jersey. In
14 addition, when asked that -- there is some history of drug
15 usage, would ask that he be eligible for -- be made eligible
16 for the 500 hour drug treatment program.

17 THE COURT: The RDAP program?

18 MR. RYMSZA: RDAP.

19 THE COURT: Thank you.

20 So Mr. Baird, I will make that request of the Bureau
21 of Prisons that you be placed at FCI Fairton. The
22 dispositional report will be docketed by my staff before the
23 day is out today. And I will also make a recommendation to the
24 Bureau of Prisons that you be placed in the RDAP program if

1 it's found that you qualify for that. And you may find that
2 program to be of some benefit. I think that's frankly up to
3 you as to whether you participate.

4 Once you get involved, if you, indeed, qualify, but it
5 is worth being involved, as I think there is some history of
6 drug use in the past, and my understanding is that that's
7 beneficial, it is a beneficial program. So I will note both of
8 those requests. They will be in my dispositional report noted
9 and docketed later today.

10 Mr. Rocktashel, I think there are some counts to
11 dismiss here.

12 MR. ROCKTASHEL: There are, Your Honor. And pursuant
13 to the plea agreement, we move for their dismissal.

14 THE COURT: Right. They are duly dismissed.

15 Anything else, Mr. Rocktashel, in Mr. Baird's case?

16 MR. ROCKTASHEL: No, Your Honor. Thank you.

17 THE COURT: Mr. Rymsza, anything else regarding your
18 man?

19 MR. RYMSZA: Nothing, Judge.

20 THE COURT: Mr. Baird, let me just take a moment to
21 speak to you. We are about the same age. I typically don't
22 speak to criminal defendants after they are about 35. My view
23 is what's the point, you've sort of developed out. I'm going
24 to say something to you, which, by the way, you are welcome to

1 ignore. If this were a judicial opinion, this is called dicta.
2 It's what lawyers and judges call dicta.

3 You can't ignore the 160 month sentence. You are
4 going to serve that, in all likelihood. Even if you are going
5 to file an appeal or not, in all likelihood that's the
6 sentence. That's the end of it. This dicta you can ignore and
7 or you can take to heart.

8 I acknowledge, and I don't ignore your act of
9 contrition, as it were, to the Court. You said you're a
10 changed person. You found a different path. I'm not
11 challenging you on that. That may well be the case. I'm
12 sentencing you for your conduct in the past, not your conduct
13 moving forward.

14 As my old rector at Notre Dame used to say; every
15 saint has a past and every sinner has a future.

16 Court is adjourned.

17 THE COURTROOM DEPUTY: All rise.

18 (2:45 p.m., court adjourned.)
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REPORTER'S CERTIFICATE

I, Lori A. Fausnaught, RMR, CRR, Official Court Reporter for the United States District Court for the Middle District of Pennsylvania, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of the within-mentioned proceedings had in the above-mentioned and numbered cause on the date or dates hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my supervision.

s/Lori A. Fausnaught, RMR, CRR

Lori A. Fausnaught, RMR, CRR
Official Court Reporter

REPORTED BY:

LORI A. FAUSNAUGHT, RMR, CRR
Official Court Reporter
United States District Court
Middle District of Pennsylvania
240 West Third Street, Suite 446
Williamsport, PA 17701

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